



California Fair Political Practices Commission

November 13, 1989

Guy D. Petzold
Deputy City Attorney
City of Stockton
Office of the City Attorney
Stockton, CA 95202

Re: Your Request for Advice
Our File No. A-89-591

Dear Mr. Petzold:

You have requested advice regarding the obligations of the members of the Stockton Central Parking District Advisory Board and the Downtown Stockton Associates, under the conflict-of-interest provisions of the Political Reform Act (the "Act")¹.

QUESTION

Are members of the Stockton Central Parking District Advisory Board and the Downtown Stockton Associates subject to the financial disclosure and disqualification provisions of the Act?

CONCLUSION

Members of the Central Parking District Advisory Board are subject to the Act's financial disclosure and disqualification provisions. Members of the Downtown Stockton Associates who qualify as "consultants" within the meaning of the Act are subject to the Act's disclosure and disqualification provisions.

FACTS

Your letter provided us with only limited information regarding the duties and responsibilities of the Central Parking District Advisory Board and the Downtown Stockton Associates. For

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

further information, we have reviewed several other documents including the 1988-89 Final Report of the San Joaquin County Grand Jury, documents relating to the creation of the Central Parking District, documents relating to the City of Stockton's "Contract for Service" with the Downtown Stockton Associates, and more. If you are in substantial disagreement with any of the facts described below, please let us know.

Downtown Stockton Associates is a nonprofit corporation consisting of business and property owners within the parking district. The corporation was created in 1917 but was known then as the Stockton Merchants Association. In 1968 the name was changed to Downtown Stockton Associates.

The Stockton City Council formed the Central Parking District in March of 1967. The City of Stockton has been contracting with the Downtown Stockton Associates since August 1, 1979, for the Downtown Stockton Associates to provide administrative services for the affairs of the Central Parking District.

The current contract for services provides that the Downtown Stockton Associates shall:

- 1) Make recommendations to the city council and advisory board regarding the proper course of district development;
- 2) Coordinate the activities of the district, including the acquisition, demolition and construction of real property within the district;
- 3) Negotiate for the acquisition of real property;
- 4) Supervise the operation and maintenance of all parking facilities, supervise all parking attendants, and to promulgate rules, rates and regulations; and
- 5) Prepare its own budget for the administration of the parking district for submittal to the city council for approval.

The 1988-89 San Joaquin County Grand Jury report states:

The City Council, through the Contract for Service, has given all authority to the contractor, Downtown Stockton Associates, the right to establish rates for parking and the hours the facilities are open. Downtown Stockton Associates also has been given, by practice, the right to hire, fire and supervise all parking attendants. Other employees associated with the Central Parking District come under the contract. Most of these employees are shown on the City of Stockton's payroll as part time employees. Some City Council members believe they are not city employees and

that the City Finance Department is only doing the paperwork for the Downtown Stockton Associates. However, the city staff considers them part time City of Stockton employees.

Under the Contract for Service, 2.d, the City Council has also given the authority to Downtown Stockton Associates to negotiate for the acquisition of private property required for district development.

(1988-89 Final Report of the
San Joaquin County Grand Jury,
pgs. 47-48.)

The only information we have regarding the duties of the Central District Advisory Board is your memorandum concluding that the Board is a local government agency, and a resolution of the Stockton City Council, No. 40348, dated January 23, 1984 (copy enclosed), which initially refers only to the Downtown Stockton Associates and their contact with the city to provide services for the Central Parking District, but then concludes:

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The Central Parking District Advisory Board... is hereby commended for their assistance and participation in the administration of the Central Parking District and they are requested to continue in such capacity.

2. The previously established procedure for the preparation and submission to the City Council of the Central Parking District's budget is hereby affirmed and the Downtown Stockton Associates, in conjunction with said Central Parking District Advisory Board, is hereby authorized and directed to promulgate all rules, rates, and regulations as are in their opinion necessary or convenient for the proper and efficient administration and management of the City of Stockton's Central Parking District.

(Emphasis added.)

ANALYSIS

Section 87300 provides that every agency must promulgate and adopt a conflict of interest code. The term "agency" includes the

term "local government agency." (Section 82003.) "Local government agency" is in turn defined as:

... a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.

(Section 82041.)

Central Parking District Advisory Board

You have indicated that the Central Parking District Advisory Board qualifies as a local government agency. Accordingly, a conflict of interest code must be adopted for the agency. The code must enumerate each "designated employee" within the agency who is involved in the making or participation in the making of decisions which may foreseeably have a material financial effect on any financial interest and for each such enumerated position, the specific types of investments, business positions, interests in real property, and sources of income which are reportable. (Section 87302.)

As indicated in your memorandum, the term "designated employee" does not include any unsalaried member of a board or commission which serves a solely advisory function. (Section 82019.) This is further clarified in Regulation 18700 which provides:

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an

extended period of time have been,
regularly approved without significant
amendment or modification by another
public official or governmental agency.

(Regulation 18700(a)(1)(A), (B)
and (C).

Your memorandum concludes that the Central Parking District Advisory Board does not possess decision-making authority because there is no requirement of a super-majority to override its recommendations to the city council, and because the city council has at times rejected its recommendations regarding parking rates. However, it appears that the board may have final decision making authority in a number of areas. For example, the documents referred to above indicate that the board may adopt "all rules, rates, and regulations as are in their opinion necessary or convenient for the proper and efficient administration and management of the City of Stockton's Central Parking District." Furthermore, it appears that the advisory board may be involved in making final decisions on a day-to-day basis regarding administration of the district. For example, decisions to hire or fire personnel, purchase supplies, or enter into contracts all involve final governmental decisions. If members or employees of the board possess any such decision making authority, the Central Parking District Advisory Board must adopt a conflict-of-interest code requiring financial disclosure by such persons.

Downtown Stockton Association

As with the Central District Advisory Board, the Downtown Stockton Association (the "DSA") must adopt a conflict of interest code if it is a local government agency. You have concluded based upon the Commission's opinion in In re Leach (1978) 4 FPPC Ops. 48 (copy enclosed), that the Downtown Stockton Associates is not a local government entity. We agree.² However, as was done in Leach, we must still consider whether some employees of board members of the Downtown Stockton Associates are "consultants" who must be designated employees under the City of Stockton's conflict-of-interest code.

Commission regulations define the term "consultant" as follows:

(2) "Consultant" shall include any
natural person who provides, under contract,

² As in Leach, the Downtown Stockton Associates was in existence well before it began contracting with the city to provide services in connection with the Central Parking District. Furthermore, the operation of parking facilities is often performed by nongovernmental entities. Thus, at least two of the criteria in Leach are not met.

information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

(Regulation 18700(a)(2).)

As indicated in Leach, even though employees and board members of the Downtown Stockton Associates do not perform traditional consultant services, they are consultants within the meaning of the Act if they make governmental decisions or act as quasi-employees of the City. In the present situation, it appears that members of the Downtown Stockton Associates qualify as consultants under this test. The members of the Downtown Stockton Associates appear to have authority to adopt rules, rates and regulations for operation of the Central Parking District, to hire and fire employees of the Central Parking District, and to negotiate for the acquisition of real property. It appears that the contract in effect gives the Downtown Associates authority to operate the district on a day-to-day basis. In exercising that authority they fill a role which would otherwise be filled by city employees. In such circumstances, those members of the Downtown Stockton Associates are "consultants" within the meaning of the Act. Those members and employees of the Downtown Stockton Associates who qualify as consultants should be designated in the City of Stockton's conflict of interest code.

Disqualification

The Act prohibits a public official from participating in any decision in which the official has a financial interest. (Section 87100.) The term "public official" includes any member, officer, employee or consultant of a state or local agency. (Section 82048.) An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect

on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

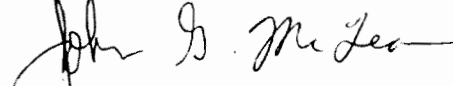
(Section 87103(a)-(e).)

To assist you further, I have enclosed a copy of a pamphlet entitled "A Guide to the Political Reform Act of 1974 California's Conflict of Interest Law or Public Officials."

If you have any further questions, please do not hesitate to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: John G. McLean
Counsel, Legal Division

KED/JGM/aa

Enclosures



R. THOMAS HARRIS
CITY ATTORNEY

JOHN T. MORAN
ASSISTANT CITY ATTORNEY

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December 11, 1989

John G. McLean
Counsel, Legal Division
California Fair Political
Practices Commission
P. O. Box 807
Sacramento CA 95804-0807

RE: LETTER OF NOVEMBER 13, 1989--YOUR FILE NO. A-89-591

Dear Mr. McLean:

Thank you for your letter dated November 13, 1989. While I do not entirely agree with your analysis, the City will defer to your judgment and amend the conflict of interest code to include the Central Parking District Advisory Board and the Executive Director of the Downtown Stockton Associates, Mr. Ed Coy. They will all be required to file financial disclosure statements.

Mr. Coy is the only member of the Downtown Stockton Associates who could qualify as a "consultant" since he personally runs the day-to-day operations of the Parking District. The members, officers and board of directors of the Downtown Stockton Associates never get involved in the operations of the parking district.

Anything having to do with the parking district goes to the Central Parking District Advisory Board, not the board of directors of the Downtown Stockton Associates.

"Stockton... Someplace Special!"

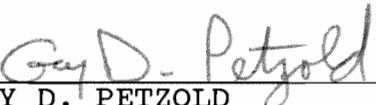
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John G. McLean
December 11, 1989
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I assume that this will fully satisfy the FPPC. If this assumption is incorrect, please let me know.

Very truly yours,

R. THOMAS HARRIS
CITY ATTORNEY

By 
GUY D. PETZOLD
DEPUTY CITY ATTORNEY

GDP:plc

cc: Ed Coy
Central Parking District
11 S. San Joaquin St.
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Deanne Stone
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October 13, 1989

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Catherine Donovan, General Counsel
Fair Political Practices Commission
428 J. Street, Suite 800
Sacramento, CA 95814

Attention: John McLean

RE: CITY OF STOCKTON/CENTRAL PARKING DISTRICT

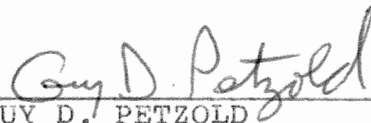
In response to your telephone call on October 12, 1989, please find enclosed a copy of a legal memorandum that I drafted, dated December 30, 1988, regarding the issue of whether the Central Parking District Advisory Board is subject to the disqualification and disclosure provisions of the Political Reform Act. As you can tell from the memorandum, my conclusion is that the Board is exempt because it does not have any decision-making power.

Also, please note that in the last paragraph of my memorandum I concluded that the Downtown Stockton Associates is not subject to the Political Reform Act.

I would be happy to discuss this matter with you and provide you with any further information you deem necessary. Also, please send a copy of my memorandum to your Enforcement Division as I understand they have an informal complaint on file and will be reviewing this issue.

R. THOMAS HARRIS
CITY ATTORNEY

BY


GUY D. PETZOLD
DEPUTY CITY ATTORNEY

GDP:ap

Enclosure

"Stockton... Someplace Special!"

MEMORANDUM

December 30, 1988

TO: R. THOMAS HARRIS, City Attorney
FROM: GUY D. PETZOLD, Deputy City Attorney
RE: CENTRAL PARKING DISTRICT/POLITICAL REFORM ACT

Question

Are the members of the Central Parking District Advisory Board subject to the disqualification and disclosure provisions of the Political Reform Act?

Answer

No, because the Advisory Board does not have any decision-making power.

Analysis

The Political Reform Act of 1974 (Government Code sections 81000 et seq.) contains some very complex provisions regarding conflicts of interest (Government Code sections 87100-87500). Generally, it provides that:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100)

This disqualification section applies to all "public officials," which is defined in Section 82048 as "every member, officer, employee or consultant of a state or local government agency." "Local government agency" is defined in Section 82041 as "a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing."

The Advisory Board certainly qualifies as a "local government agency" because it is a board of the City of Stockton (see memo dated December 15, 1988). Also, the Board of Directors would appear to be "public officials" because they are members of the

Board. However, "member" is further defined in the regulations as follows:

"Member" shall include, but not be limited to salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

- (a) It may make a final governmental decision;
- (b) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or
- (c) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency. (2 Cal. Admin. Code, section 18700(a)(1).)

Thus, whether or not a board member is a "public official" depends upon whether the board has decision-making authority using the above criteria. The Fair Political Practices Commission used this same analysis to find that members of a redevelopment project area committee are "public officials" in 10 FPPC 1 (May 12, 1987) which overruled their prior opinion in 2 FPPC 146 (Oct. 5, 1976).

In the 1987 opinion, the Commission pointed out that Health and Safety Code sections 33366 and 33385.5 had been amended to prohibit a redevelopment agency from approving a redevelopment plan that the PAC had recommended against except by a two-thirds majority of the entire membership. The Commission found that this, in effect, gave the PAC's recommendations a substantial amount of impact and speculated that the recommendations would often be approved without amendment. Thus, the Commission found that project area committees possess decision-making authority within the meaning of Regulation 18700 (a)(1)(c).

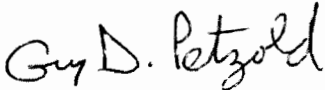
The Central Parking District Advisory Board can be distinguished from the above facts in that its recommendations to the City Council do not carry any super majority requirement. In addition, the last time the recommended rates for the Central Parking District were brought before the Council, there was considerable discussion about not following the recommendation. Thus, the

Memorandum to R. Thomas Harris
December 30, 1988
Page 3

Advisory Board can truly be said to be advisory only, without any decision-making authority. The only decision-making authority rests with the City Council.

In order to determine if the Advisory Board members need to file disclosure statements, a different definition needs to be examined. Conflict of Interest Codes adopted by the City are required to identify "designated employees" and assign to those positions appropriate categories of financial disclosure (section 87302). "Designated employees" is defined in Section 82019 which specifically excludes "any unsalaried member of any board or commission which serves a solely advisory function." To determine if the Advisory Board serves a solely advisory function we return to the definition of "member" found in the regulations and conclude that the Advisory Board truly is advisory only. Thus, the Board members do not have to file disclosure statements.

As a footnote, the Downtown Stockton Associates, a nonprofit corporation which has a contract with the City to operate the Central Parking District, is not a "local government agency" and therefore is not subject to the provisions of the Political Reform Act. (See 4 FPPC 48 (Sept. 6, 1978) where the Commission found that the Bakersfield Downtown Business Association was not a "local government agency.")



GUY D. PETZOLD
DEPUTY CITY ATTORNEY

GDP:gc

89-591



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October 17, 1989

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F P P C

John McLean
Fair Political Practices Commission
428 "J" Street, Ste. 800
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RE: CITY OF STOCKTON/CENTRAL PARKING DISTRICT

As further evidence that the Central Parking District Advisory Board has no decision-making authority, the City Council voted 5-4 last night to not acquire Mr. Frank Portale's property for a parking lot. This was directly contrary to the Central Parking District Advisory Board's recommendation.

Therefore, you can readily see that the City Council does not just "rubber-stamp" everything that the Advisory Board recommends. In fact, the City Council has lengthy debates after much public input on almost everything having to do with the Central Parking District.

R. THOMAS HARRIS
CITY ATTORNEY

By Guy D. Petzold
GUY D. PETZOLD
DEPUTY CITY ATTORNEY

GDP:plc

"Stockton... Someplace Special!"

Memorandum

To : File No. A-89-591

Date : January 17, 1990

From : **FAIR POLITICAL PRACTICES COMMISSION**
John McLean

Subject: Telephone Conversation with Guy Petzold

On December 27, 1989 I called Guy Petzold regarding his December 11, 1989 letter. Mr. Petzold indicated that Ed Coy is the only person involved with decisions of the Central Parking District Advisory Board and so he is the only person they covered under the conflict-of interest code.

I told Mr. Petzold that I had no basis on which to disagree with that conclusion and that it is the city's obligation based upon their knowledge of the facts to decide which persons qualify as "consultants."